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## NOTES.

LEGISLATIVE POWER TO REGULATE MUNICIPAL CONTRACTS.—In determining the validity of statutes limiting the right of municipal corporations to enter into contracts, the courts have had to answer three questions: (1) Is the liberty of the municipality or of the prospective contractor infringed? (2) Are tax-payers or the city deprived of property without due process of law? (3) Has any constitutional guaranty of local home-rule been violated? The Federal Supreme Court and the courts of last resort in New York and Indiana, in passing upon such statutes, have each had occasion recently to consider one or more of the above questions. *Atkin v. Kansas* (1903) 191 U. S. 207; *People v. Road Construction Co.* (1903) 175 N. Y. 84; *Street v. Electric Supply Co.* (Ind. 1903) 66 N. E. 895. In the first case, against the view of three judges, the Kansas municipal eight hour law was upheld, the opinion of the court being that neither the liberty of the corporation nor that of the contractor was infringed. The New York court, three justices dissenting, declared a similar act unconstitutional upon the ground that the contractor was deprived of freedom of contract. In the Indiana case the minimum wage statute was overthrown for all three of the above reasons. The home-rule principle was also a ground of decision in a similar case in New York, *People v. Coler* (1901) 166 N. Y. 1. Considering these representative cases, it

appears that the results are capable of being harmonized, though in doing so, much of the reasoning in the State cases must be discarded. In attempting a reconciliation the questions above set out will be severally considered. The Federal and State courts are squarely at issue upon the question whether a statutory limitation upon municipal contractual powers deprives the individual or the city of liberty. The position of HARLAN, J., is that since the powers of municipal corporations may be enlarged, restricted or annulled at the will of the legislature, they cannot be said to possess as corporations a liberty of contract protected by the constitution. The objection that the contractor and his employees are deprived of contractual freedom is met by the assertion that no one is entitled as a matter of right and part of his liberty to perform labor for the State. Nor is he, it would seem, any more entitled to contract with or perform labor for the municipality even in its private capacity, since here too, its "rights of decision and action are still subject to be interfered with by the legislature." Goodnow, *Municipal Home Rule*, 230. In holding the statutes unconstitutional on this ground, the State courts do not seem to have recognized the undoubted power of the legislature in the absence of express constitutional prohibition to accomplish the purpose of the statute by amendment of the municipal charters unless, indeed, the decisions be understood to be that the ability to annul contractual powers does not imply the right to regulate their exercise. 1 Dillon, *Municipal Corporations*, 4th ed., 140. The abbreviation of liberty of contract was the only constitutional question discussed in *Atkin v. Kansas*, supra, and *People v. Road Co.*, supra, but in *Street v. Electric Supply Co.*, supra, it was further held that the statute in question by requiring the municipality to pay a minimum wage rate deprived the tax-payer of property without due process of law. The point is of questionable validity in view of the fact that the statute is not a mandatory one. Whether any contract obligation shall be incurred is discretionary with the city, the legislature merely prescribing the terms of such a contract if made. Moreover, as PARKER, C. J., points out in his dissenting opinion in *People v. Coler*, supra, no such objection has ever been raised to the power of the legislature to fix the compensation of city officials.

The cases may be supported, however, upon the theory of the constitutional principle of local home rule laid down by O'BRIEN, J., in *People v. Coler*, supra, and quoted with approval in *Street v. Electric Supply Co.*, supra. This principle is expressly embodied in the New York Constitution, Art. 8, § 10; Art. 10, §§ 1-2, and by implication in that of Indiana, *State v. Denny* (1888) 118 Ind. 382. In Kansas the courts have denied its existence as a constitutional guaranty to the extent claimed in Indiana, *State v. Hunter* (1888) 38 Kan. 578, and the question could not, of course, be raised in the Federal Supreme Court. The New York Court of Appeals appears to have left solid ground in not making this the ground of decision in *People v. Road Cons. Co.*, supra.